

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 109/MP/2021 along with IA No.37/2021**

Subject : Clarification Petition under Section 79(1)(f) and Section 94 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Section 151 of Code of Civil Procedure seeking clarification of order dated 5.2.2019 passed by this Commission in Petition No. 187/MP/2018 and 193/MP/2018.

Date of Hearing : 4.6.2021

Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri P. K. Singh, Member

Petitioner : ReNew Wind Energy (TN2) Private Limited (ReNew)

Respondents : NTPC Limited (NTPC) and 7 Ors.

Parties Present : Shri Sujit Ghosh, Advocate, ReNew  
Ms. Mannat Waraich, Advocate, ReNew  
Ms. Poorva Saigal, Advocate, NTPC  
Ms. Tanya Sareen, Advocate, NTPC  
Shri Ispaul Uppal, NTPC

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking clarification of the Commission's order dated 5.2.2019 in Petition No. 187/MP/2018 and Petition No. 193/MP/2018, wherein the Commission has held that the introduction of GST Laws w.e.f. 1.7.2017 is a Change in Law event and consequently has allowed the Petitioner to claim the compensation for increase in tax cost on account of implementation of GST Laws. Learned counsel for the Petitioner mainly submitted the following:

(a) In terms of the order dated 5.2.2019, the parties have agreed upon the payment of compensation on account of GST Laws by way of one time lump-sum amount and accordingly, the Petitioner duly submitted its claims depicting the actual impact on account of GST Laws.

(b) After multiple correspondences and reconciliation process between the parties, the total claim of the Petitioner stands at Rs. 6.91 crore. Out of Rs. 6.91 crore, claim of Rs. 5.66 crore has been completely reconciled and is undisputed by NTPC. However, for balance claim of Rs. 1.25 crore, NTPC is required to submit certain additional documents.

(c) Despite significant amount of claim having been reconciled between the parties, NTPC has refused disbursement of the accepted claim of Rs. 5.66 crore pending the submission of additional documents for balance claim of Rs. 1.25 crore, on the ground that it would not be able to disburse the claim amount in

instalment and that the payment shall only be made on lump sum basis as per the order of the Commission.

(d) Being aggrieved by NTPC's contrived reading of order dated 5.2.2019, the Petitioner is seeking clarification of the Commission's order to this effect and also a direction for disbursal of undisputed claims of Rs. 5.66 crore, which has been pending for disbursal for over two years.

(e) The Commission's order dated 5.2.2019 does not impose any restriction with respect to the Petitioner's claims being prior to or post Commercial Operation Date ('the COD') of the Project. However, NTPC has sought to deny certain claims of the Petitioner on the basis of goods and services being received after COD as per the subsequent orders of the Commission including order dated 30.12.2019 in Petition No. 4/MP/2019 and Ors.

(f) Since the aforesaid issue was neither argued during the proceedings of Petition Nos.187/MP/2018 and 193/MP/2018 nor the order dated 5.2.2019 makes any reference in this regards, the Commission may issue an appropriate clarification in this regard.

(g) The Petitioner may be permitted to make additional submissions to the effect that the restriction of compensation on account of GST Laws for invoices issued and procurements made upto COD may not be appropriate and that the Petitioner ought to be allowed compensation for entire GST incurred on account of Change in Law without demarcation of same till COD or beyond the COD.

(h) The Petitioner has also filed IA No.37/2021 seeking direction to forthwith release the payment towards the accepted GST claim amount of Rs. 5.66 crore as reconciled and agreed, as an interim measure, during the pendency of the Petition.

3. Learned counsel for the Respondent, NTPC accepted the notice and mainly submitted as under:

(a) As regards the issue of restricting the Petitioner's GST claims for invoices issued only upto COD, it may be clarified that the said issue stands covered by the Commission's various decisions including order dated 30.12.2019 in Petition No. 4/MP/2019 and Ors.

(b) Pursuant to the order of the Commission, the Petitioner had raised the first bill/invoice on NTPC on 8.4.2019 with claim of Rs. 13.13 crore. Pursuant to the reconciliation between parties, the aforesaid claim stood revised to Rs. 8.8 crore. In February, 2020, the Petitioner had itself stated that the claim amount was Rs. 8.8 crore.

(c) After further reconciliation and the auditor certificate, the Petitioner revised its claim to Rs. 6.91 crore in November, 2020. Thereafter, in January, 2021, when NTPC sought certain additional data/documents, the Petitioner expressed its inability to produce Customs Notification in support of its claim of Rs. 1.25 crore. The above sequence of events clearly shows that the claim amounts have been consistently changing.

(d) Any direction to release the payment to the Petitioner/generator in a piecemeal manner may lead to a situation where a generator may insist upon releasing the payment against each and every reconciled amount without any threshold limit and irrespective of total claims.

- (e) NTPC may be permitted to raise the invoices on the buying utilities/ distribution licensees in the same manner as sought to be raised by the Petitioner on NTPC.
- (f) Liberty may be granted to NTPC to file written submissions.
4. After hearing the learned counsels for the Petitioner and the Respondent, NTPC, the Commission admitted the Petition.
5. Based on the request of learned counsel for the Respondent, NTPC, the Commission directed the Respondent to file its written submission by 11.6.2021.
6. Subject to the above, the Commission reserved the matter for order.

**By order of the Commission**  
**Sd/-**

**(T.D. Pant)**  
**Joint Chief (Law)**